



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: October 25, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Dan Smith, Administrator, Division of Agricultural Development *DGS*

SUBJECT: Approval: Statement of Scope modifying Chapter ATCP 142 relating to The Cranberry Marketing Order

PRESENTED BY: Noel Favia, Division of Agricultural Development

REQUESTED ACTION:

At the November 13, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "scope statement" (copy attached) for proposed changes to current DATCP rules related to the Cranberry Marketing Order.

If the proposed scope statement is approved, the department will promulgate a rule which would increase the maximum amount the Cranberry Marketing Order Board may assess cranberry growers to enable the Board to more effectively achieve the purposes of Ch. 96, Stats., (the Agricultural Marketing Act) and particularly to more effectively maintain and expand the sale of cranberries. The proposed rule would increase the maximum annual assessment that the Cranberry Board may charge to growers from the current maximum of 10 cents per barrel. Any amendment to the marketing order including a proposal to increase the maximum annual assessment must be approved at referendum by a majority of all Wisconsin cranberry growers.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. This scope statement was approved by the Governor on October 11, 2013. Wisconsin statutes also require the DATCP Board to approve a scope statement before the department can begin to draft a proposed rule. DATCP is required to publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached scope statement with the Legislative Reference Bureau for publication in the November 1, 2013 issue of the Wisconsin Administrative Register and filed a copy with DOA as required.

Approval of a scope statement is just the first, preliminary step in a lengthy rulemaking process. The Board will have at least two further opportunities to review the proposed rule. Before DATCP holds public hearings on this rule, the department must prepare an economic impact analysis and the Board must approve a hearing draft. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will become effective when the final draft has

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been approved by the DATCP Board and the Governor, completed the legislative review process, been signed by the Secretary and published in the administrative register.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 142, Wis. Adm. Code (Existing)

Relating to: The Cranberry Marketing Order

1. Description of the objective of the rule:

This proposed rule would increase the maximum amount the Cranberry Marketing Order Board may assess cranberry growers to enable the Board to more effectively achieve the purposes of Ch. 96, Stats., (the Agricultural Marketing Act) and particularly to more effectively maintain and expand the sale of cranberries.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. The Cranberry Marketing Order that currently exists was adopted in 1983. It provides for a maximum annual assessment for each cranberry producer covered by the order of 10 cents per barrel of cranberries produced. The primary purpose of the marketing order is to maintain and expand the sale of cranberries. To that end, funds collected through assessments may be used by the marketing board for marketing research and development, industrial research and education programs that serve to meet the purpose of the marketing order.

Proposed policies. At the request of the Cranberry Marketing Board, DATCP will explore an increase to the maximum annual assessment sufficient to enable the Cranberry Marketing Board to continue the expansion of the sale of Wisconsin grown cranberries. Any amendment to the marketing order must be approved at a referendum of the growers.

Policy Alternatives. Leave the current rule as it is with the same assessment maximum which has not increased since 1983. There has been tremendous growth of Wisconsin cranberry sales and the Board's use of assessment funds has played an important role in that growth. To maintain that success the Cranberry Board is requesting the increase

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 96.15, Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

96.15 Rules. The secretary may, in consultation with the appropriate marketing board or council, issue such rules as necessary to facilitate the administration and enforcement of this chapter.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule would affect cranberry growers. The proposed rule would increase the maximum annual assessment that the Cranberry Board may charge to growers from the current maximum of 10 cents per barrel. Any amendment to the marketing order including a proposal to increase the maximum annual assessment must be approved at referendum by a majority of all Wisconsin cranberry growers.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There is a federal cranberry marketing order program. The federal cranberry marketing order program serves to promote orderly and efficient marketing of cranberries in the United States. The state and federal programs are complementary and the state program works in close coordination with the federal program. The Department is not aware of any proposals pending to alter the federal cranberry marketing program.

7. Anticipated economic impact

DATCP expects the proposed rule to have minimal economic impact statewide and locally.

Contact Person: Noel Favia, Marketing order Program Coordinator; Phone (608) 224-5140



Ben Brancel

Secretary

Department of Agriculture, Trade and Consumer Protection

9-24-13

Date Submitted